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MINISTRY OF LABOUR

NOTIFICATION

New Delhi, the 11th February 1952

S.R.O. 258.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the award of the Industrial Tribunal (Punjab National Bank Dispute) in respect of the dispute between the Punjab National Bank Limited and its workmen.

INDUSTRIAL TRIBUNAL

PUNJAB NATIONAL BANK LTD., DISPUTE, NEW DELHI

Present

Shri Amarendra Nath Sen, (Retired Judge, High Court Calcutta), Chairman and Sole Member.

AWARD

This is a reference by Government of an industrial dispute between the Punjab National Bank Ltd., hereinafter called the Bank and its branches on the one hand and their workmen who are represented by the All India Punjab National Bank Employees' Federation, hereinafter called the Federation, and the U.P. Bank Employees' Union, Agra, hereinafter called the Union on the other. Mr. A. S. R. Chari appeared on behalf of the Federation and Mr. A. C. Kakar, General Secretary of the Union, appeared on behalf of the Union. Mr. Ram Lal Anand with Mr. Suraj Bhan and others appeared on behalf of the Punjab National Bank Ltd., in the preliminary stages, thereafter Mr. Radhey Lal Agarwal represented the Bank. The case on behalf of the workmen was argued mainly by Mr. Chari and Mr. Kakar virtually adopted that argument on behalf of the Union. I have split up the reference into two cases. Case No. 1 deals with Federation and case No. 2 with the Union. This award shall govern both cases.

2. I shall take up case No. 1 first. It will be necessary to state certain facts which led to this dispute. On April, the 17th, 1951, there was a pen-down strike in the Head Office of the Bank because an employee of the Bank, named Sabbarwal, was suspended. This pen-down strike spread. On April 20th, 1951, there was a general strike of all the branches of the Bank in India. On April 21st, the Bank issued a general notice to all employees asking them to rejoin work on the 24th or latest 25th and stated that such of the employees as did not rejoin by that date would be considered as dismissed and not taken back into employment. None of the employees rejoined and the strike continued in all the branches. An appeal was made by the employees to the Honourable Prime Minister; thereafter, Government intervened and sent for the managing members of the Bank and had discussions with them. The Bank agreed to take back all the employees who had struck excepting 150. It did not furnish the names of the 150 persons whom it wished to exclude. Government informed the Bank that there would be a reference with respect to these 150 persons to an Industrial Tribunal. The Bank agreed and stated that it would select who these 150 persons would be later. No list of names of

these persons was sent to anybody at this time. Government informed the Federation of these matters, whereupon the Federation wrote to Government objecting to the Bank being allowed a free hand in selecting those whom they wanted to keep out. Government was of the opinion that the arrangement with the Bank was proper. The Bank sent circular letters to all its branches in India asking them to suggest names of persons who should be kept out from re-employment. After these lists were sent to the Head Office, the Bank selected 150 names therefrom and sent the list to Government. Thereafter Government referred the dispute to this Tribunal of which I am the sole member.

3. After hearing the parties I decided that the Federation and Union being more or less in the position of plaintiffs should begin the case. After hearing the parties with respect to their different cases, the following issues were framed:—

1. Was there a dismissal of the persons mentioned in Schedule II?
2. If so, was such dismissal wrongful?
3. Are the workmen or any of them named in Schedule II entitled to an order for reinstatement?
4. If so, to what additional relief are they entitled?
5. Are the persons mentioned in items Nos. 1, 2, 5, 6, 16, 19, 25, 27, 28, 44, 48, 72, 75, 76, 77, 80, 86, 93, 94, 95, 96, 98, 99, 101, 102, 103, 107, 109, 112, 115, 117, 118, 121, 125, 126, 128, 134, 135, 146, 147 and 149 connected with the East Punjab Employees' Federation and 72, 75, 76, and 77 connected with the U.P. Bank Employees' Association, workmen within the meaning of the Industrial Disputes Act? If not, has the Tribunal jurisdiction to entertain any disputes regarding them?

Issue No. 3 was altered and framed as follows:

Are the persons or any of them named in Schedule II entitled to an order for reinstatement?

4. A preliminary point was taken by Mr. Anand on behalf of the Bank regarding the jurisdiction of this Tribunal to entertain the reference. He contended that as the dispute was not an industrial dispute therefore this Tribunal had no jurisdiction and that the reference by Government was incompetent. He adduced certain other grounds in support of his contention that the Tribunal had no jurisdiction. I dealt with this issue as a preliminary one and held that the reference was proper and that this Tribunal had jurisdiction. My order in this respect has been recorded separately and is Order No. 6 of 24th September 1951, in case No. 1. A copy of that order is annexed hereto as Appendix 'A' and shall form part of this award.

5. There was an application made by the Federation and Union for the granting of an interim allowance to the 150 persons who had been locked out by the Bank. This was opposed by Mr. Anand on behalf of the Bank. I held that these 150 persons were entitled to an interim allowance pending the disposal of this case and fixed the amount of such allowance. This was done by a separate Order No. 5 passed on 24th September 1951, to which reference may be made. The Bank moved the High Court of Punjab against this order and obtained an interim stay of the execution of that order till the disposal of the application before the High Court. The entire records were called for by the High Court and they were sent. The records were returned on 23rd November, 1951, the application being rejected. Thereafter the Bank filed an appeal before the Appellate Industrial Tribunal with partial success. The order granting interim allowance was upheld but the amount was halved. The Appellate Tribunal returned the records on 9th January, 1952.

6. It will be seen from the above recital of the facts, from the order of reference made by Government and from the orders passed by me that this is a dispute between the Punjab National Bank Ltd., on the one hand and all its workmen represented by the Federation and Union on the other and that it relates to or is in respect of the alleged wrongful dismissal of the 150 persons named in the Schedule II of the order of reference. The contention of the workmen is that these persons have been wrongfully dismissed pursuant to a policy of victimisation by the Bank and they claim that they should be reinstated and that the Tribunal should pass such ancillary orders as it thought proper.

7. I wish to emphasise at this stage that the dispute is not one between the Punjab National Bank Ltd., and the 150 persons named in the Schedule of the order of reference. It is true that the dispute relates to the dismissal of these 150 persons, nevertheless, it is a dispute between the Bank on the one hand and all its workmen represented by the Federation and the Union on the other and not one between the Bank and these 150 persons only. I expressed this view in the order

dismissing the preliminary objection regarding jurisdiction which was taken by the Bank. Mr. Anand on behalf of the Bank wished to show that most of these 150 persons were not workmen within the meaning of the Industrial Dispute Act and proposed to adduce evidence on this point, his contention being that as these persons were not workmen, the dispute was not an industrial dispute within the meaning of the Industrial Disputes Act. Having regard to the view which I had already taken I did not think it at all necessary to hear evidence on the question whether these 150 persons are workmen or not. At the risk of repetition I propose to give my reasons again for holding the view that the present dispute is an industrial dispute even if the 150 persons named in the Schedule be not workmen. An industrial dispute is defined in section 2 sub-section (k) as follows:—

> "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, *of any person.*"

From the order of reference it is quite clear that the dispute referred to this Tribunal is one between the Bank and its workmen and that it relates to the employment or non-employment of these 150 persons. From the definition of "industrial dispute" given above it is quite clear that a dispute would be an industrial dispute if it relates to or is connected with the employment or non-employment or terms of employment or with the conditions of labour of *any person*. It is not necessary that the person with regard to whose employment etc. the dispute arises should be a workman within the meaning of section 2 sub-section (s) of the Industrial Disputes Act. The words *any person* cannot be construed to mean 'workmen' only. They include persons who are not workmen. It is admitted by both parties that the 150 persons named in the Schedule of the order of reference are employees of the Bank. Having regard to this fact and to the conclusions at which I have arrived regarding the points of law raised, I am of opinion that evidence on the question whether these 150 persons are workmen or not within the meaning of the Industrial Disputes Act is quite irrelevant. It would be, in my opinion, a sheer waste of time to hear evidence on the question whether these 150 persons are workmen or not and I, therefore, decided that no evidence on this point would be taken.

8. The main points to be decided are: (a) whether the dismissal of these 150 persons was wrongful and if so, to what relief they would be entitled and (b) whether the refusal of the Bank to employ them when it took back the other strikers was tainted with discrimination amounting to an unfair labour practice and should be remedied.

9. Before dealing, however with this question, I wish to discuss another matter, *viz.*, whether the Indian Evidence Act applies to the proceedings of this Tribunal. Mr. Chari on behalf of the Federation and Mr. Kakar on behalf of the Union wished to put in certain documents as evidence. The Bank objected to some of these documents going in inasmuch as they were not proved strictly in accordance with the terms of the Indian Evidence Act. Mr. Chari and Mr. Kakar contended that the Evidence Act was not applicable to proceedings before this Tribunal whereas the Bank contended that this Tribunal was bound by the provisions of that Act like any court of justice. It will become evident after a full consideration of the relevant facts of this case that this question is really not of much practical importance in the present case but as the point has been argued at length by both the parties, I think that I should, out of deference to the representatives of both the parties, deal with this question at some length and give my decision thereon.

10. On behalf of the Federation, the contention shortly is this: For the Evidence Act to apply, the proceedings must be before a Court and they must be judicial proceedings. This is what is deducible from Sections (1) and (3) of the Evidence Act. Section 1 says that the Act applies to all judicial proceedings in or before any Court but not to arbitration proceedings and Section 3 says that in the Evidence Act, 'Court' includes all judges and magistrates and persons, except arbitrators, legally authorised to take evidence. The Act can only apply, therefore, when the judges, magistrates or other persons are holding judicial proceedings. The definition of Court is not a general definition but a definition for the purposes of the Evidence Act only and it cannot be extended to apply to other statutes. A Tribunal under the Industrial Disputes Act is a Court only for the specific purpose mentioned in the Act itself and it is not a Court for any other purpose. The proceedings are not judicial as the decision of a Tribunal, according to the Industrial Disputes Act, is not a decree but an Award. The Award is not enforceable by the Tribunal but by

Government whereas a decree in a judicial proceeding is enforceable by the authority holding it. Further, lawyers are always heard in judicial proceedings whereas under the Industrial Disputes Act, lawyers are not permitted to appear unless the parties and the Tribunal consent. Mr. Chari, relied on the following cases:—

1. I.L.R. 11—Madras, p. 88. Venkatasami & Others *vs.* Subramanya.
2. I.L.R. 12—Bombay—36, Queen Empress *vs.* Tulja, p. 41.
3. A.I.R. 194/—Calcutta—286, Hari Charan *vs.* Koshi Charan.
4. A.I.R. 1935—Madras—673, Mahabalaswarappa *vs.* Gopalaswami Mudaliar.
5. A.I.R. 1944—Calcutta—p. 127, Chandar Bhan Bilotia and Others *vs.* Ganpat Rai & Sons.
6. Ludwig Teller—Volume I, 536.

11. On behalf of the Bank, the argument regarding the applicability of the Evidence Act may shortly be put as follows:

For the Evidence Act to apply, two elements must co-exist, namely,

(1) the proceedings should be judicial; and

(2) the Tribunal must be a Court. A reference to section 7 of the Industrial Disputes Act indicates that the proceedings before the Tribunal are judicial. Section 7 sub-section (1) of the Act states as follows:

"The appropriate Government may constitute one or more Industrial Tribunals for the adjudication of industrial disputes in accordance with the provisions of this Act."

the Tribunal is a Court and the proceedings are judicial proceedings.

This sub-section controls the whole Act and the word 'adjudication' shows that

12. Next, reliance was placed upon section 11(3) of the Industrial Disputes Act which is as follows:—

"Every Board, Court and Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (V of 1908), when trying a suit in respect of the following matters, namely:

(a) enforcing the attendance of any person and examining him on oath;

(b) compelling the production of documents and material objects;

(c) issuing commissions for the examination of witnesses;

(d) in respect of such other matters as may be prescribed;"

This sub-section gives the Tribunal all the powers that are necessary for the conduct of judicial proceedings and therefore, the Tribunal must be a Court and the proceedings must be judicial proceedings. Further, certain rules framed under the Act make it clear that both the elements necessary for the application of the Evidence Act are present. Rule 13 empowers any member of a Tribunal to administer an oath. Rule 14 is in the following terms:

"A Board, Court or Tribunal may accept, admit or call for evidence at any stage of the proceedings before it and in such manner as it may think fit."

The power of administering an oath indicates that the Evidence Act is applicable. Next, the Tribunal is given power to call for evidence in such manner as it may think fit. This also shows that the Evidence Act is applicable. Rule 15 adds strength to this view as it provides for the issue of summons by a Tribunal for the production of documents and material exhibits. The next argument was that Rule 19 gave the Tribunal the power to hear cases *ex-parte* and, therefore, the Tribunal should be looked upon as a Court. Rule 21 was also referred and the argument was that the power to order discovery, inspection and reception of evidence on affidavit shows that the Tribunal is a Court. Rule 21 was quoted and it is as follows:—

"In addition to the powers conferred by sub-section (3) of section 11 of the Act, Boards, Courts and Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure 1908, when trying a suit, in respect of the following matters, namely:

(a) discovery and inspection;

(b) granting adjournment;

(c) reception of evidence taken on affidavit;

and the Board, Court or Tribunal may summon and examine *suo moto* any person whose evidence appears to it to be material and shall be deemed to be a civil court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898."

Reliance was also placed on definitions contained in Iyer's Law Lexicon of the term 'judicial proceeding.' Section 4(m) of the Criminal Procedure Code was also relied upon and it was argued that as evidence on oath could be legally taken before a Tribunal, the proceeding before it must be a judicial proceeding. Section 4(m) of the Criminal Procedure Code is in the following terms:—

"Judicial proceeding includes any proceeding in the course of which evidence is or may be legally taken on oath"

Sections 1 and 3 of the Indian Evidence Act were also relied upon by the Bank for indicating that the Tribunal is a Court, the argument being that as the Tribunal is authorised to take evidence, it is a court as defined in section 3 of the Evidence Act and Section 1 makes the Act applicable to all judicial proceedings before any Court excluding courts martial etc.

13. The next line of argument was that there was no provision in the Industrial Disputes Act which said that the Evidence Act was in-applicable and therefore, having regard to the two points mentioned above, it should be held that the Evidence Act applies. The following cases were relied upon by the Bank:—

(1) Nanda Lal Ganguli *vs.* Khetra Mohan Ghose (I.L.R. 45—Calcutta, pp. 585-587).

(2) In *re* Venkatachala Pillai and Others (I.L.R. 10—Madras, pp. 154, 156).

(3) Mahabalaswarappa *vs.* Gopalaswami Mudaliar (A.I.R. 35—Madras pp. 673, 676).

(4) Kapur Singh *vs.* Jagat Narain (A.I.R. 1951—Punjab, pp. 49, 51).

(5) In *re* Punamchand Maneklal (I.L.R. 38—Bombay, pp. 642, 651).

(6) Nature of court (Definition) Halsbury (Hailsham Edn.) vol. VIII. p. 525 paragraph 1166.

(7) Lekhraj Kaur *Vs.* Mahpal Singh and Raghubans Kaur *Vs.* Mahpal Singh I.L.R. 5—Calcutta. pp. 744, 751).

(8) 1950—Supreme Court Reports, pp. 459, 472, 481 and 484 (Bharat Bank Case).

Great reliance was placed on the last mentioned case by the Bank. All I need say is that the present question of the applicability of the Evidence Act to the proceedings before an Industrial Tribunal was not before the Supreme Court and there was no decision on this point although there are certain observations in the judgment which may be said to suggest in some measure support for the arguments advanced by the Bank. The question before the Supreme Court was whether Article 136 of the Constitution applied to Industrial Tribunals and their lordships held that having regard to the particular words used in Article 136 it did.

14. I now propose to give my views regarding the applicability of the Indian Evidence Act to the proceedings before this Tribunal. There is no express decision on this question, so, I shall examine it by reference to the provisions of the Indian Evidence Act, the Industrial Disputes Act and general principles. In my opinion, the Indian Evidence Act does not apply to proceedings under the Industrial Disputes Act. Although certain principles of the said Act should be followed, materials which are not admissible in evidence under the said Act may be accepted as evidence on principles of natural justice provided both parties are heard on the question of admissibility. Persons take important decisions in their lives depending on materials which strictly speaking are not evidence under the Evidence Act and a Tribunal under the Industrial Disputes Act, in my opinion, may also rely on materials which it considers reliable although they are not admissible or relevant under the Evidence Act. I shall now endeavour to show by reference to the Evidence Act itself that it is not applicable to these proceedings. Section 1 of the Evidence Act is as follows:

"This Act may be called "The Indian Evidence Act, 1872". It extends to the whole of British India, and applies to all judicial proceedings in or before any Court (1) including Court Martial but not to affidavits presented to any Court or Officer, nor to proceedings before an Arbitrator".

Section 3 of the Evidence Act defines 'Court' thus:

"In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:

"Court" includes all judges (2) and magistrates (3) and all persons, except arbitrators, legally authorised to take evidence".

I would draw attention to the first three words of section 3, *viz.*, "In this Act". It is clear from these words that the Act is not attempting to define what "a court" would be in any other Act. It says that when that word 'court' is used in the Evidence Act, it shall have the special meaning given to it in section 3. If these words were not used, there would be scope for the argument that the definition was all embracing and included all bodies or persons authorised to take evidence. As stated by Woodroffe and Amer Ali in their well known treatise on the Evidence Act, "the definition of "court" is framed only for the purposes of the Act itself and should not be extended beyond its legitimate purposes". The learned authors were quoting with approval the remarks on this point contained in the case of Queen Empress *Verses* Tulja (I.L.R. 12-B, 36, 43), which was decided in 1887. Again, a statute must be read as a whole and the sections thereof must not be interpreted in isolation. Now, if sections 1 and 3 are read in co-relation, the inference follows that the Act would apply only to judges, magistrates and other persons legally authorised to take evidence when they are conducting judicial proceedings. In other words, for a judge, magistrate or person to be a 'court' within the meaning of section 1 of the Indian Evidence Act, it is not enough that they are empowered to take evidence only, they also must be acting in a judicial proceeding. What has been said above is also applicable to the definition of 'evidence' contained in section 3 of the Act. The definition is not general but is restricted to the provisions of the Evidence Act. Thus, materials which would not be 'evidence' within the meaning of the Evidence Act may be 'evidence' in proceedings not governed by the Act. In passing, I would point out that the term 'court' is defined in the Industrial Disputes Act in section 2(f) as follows:

"Court means a court of Inquiry constituted under this Act" Having regard to the restrictive meaning of the word 'court' in the Evidence Act and having regard to the definition of the same word in the Industrial Disputes Act, I am of opinion that the provisions of sections 1 and 3 of the Evidence Act do not establish that this Tribunal is a Court. I find support of the view which I have taken in certain provisions of the Industrial Disputes Act. Section 11, sub-section (3) of that Act says that every Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters, namely:

"(a) enforcing the attendance of any person and examining him on oath;

(b) compelling the production of documents and material objects;

(c) issuing commissions for the examination of witnesses; and

(d) in respect of such other matters as may be prescribed;"

It is clear from this provision that a Tribunal is not a Civil Court but it has only such powers of a Civil Court as are mentioned in section 11, sub-section (3). I would also refer to section 11, sub-section (8) which is in the following terms;

"Every Tribunal shall be deemed to be a Civil Court for the purposes of sections 480 and 482 of the Code of Criminal Procedure (1898)."

These sub-sections clearly show that an Industrial Tribunal is not a Civil Court but that it should be deemed to be such a court only for the particular purposes mentioned in these sub-sections. If the Tribunal were a Civil Court, then section 11, sub-section (3) and section 11, sub-section (8) would be quite unnecessary and otiose, as the provisions of the Civil Procedure Code and the Criminal Procedure Code would automatically apply.

15. I next take up for consideration the question whether a proceeding before an Industrial Tribunal is a judicial proceeding or not. I am of the opinion that it is not. A proceeding before an Industrial Tribunal is more in the nature of an arbitration proceeding. The decision of the Tribunal is not a decree or judgment. It is described in the Industrial Disputes Act as an "award". The term "award" connotes a proceeding in the nature of an arbitration. The award of the Tribunal is not enforceable by the Tribunal making it whereas a decree passed in a judicial proceeding is enforceable by the court which passed the decree. The award becomes enforceable only after it has been published by Government, whereas a judgment of a court in a judicial proceeding becomes enforceable on its pronouncement by the court. In this connection, I would also

refer to section 17A(1) of the Industrial Disputes Act which provides that in certain circumstances an award may be rejected or modified by the appropriate Government if it thinks fit. Thus, in certain cases, an award by an Industrial Tribunal is not a judgment in any sense of the term as it is not a final adjudication. It is in the nature of a recommendation to Government which Government in certain circumstances may accept or in certain circumstances modify or reject. It has such effect as Government would give to it and it does not become enforceable unless and until the Government chooses to make it so (*vide* section 17A). This indicates that in certain circumstances the award of a Tribunal has not the effect of a decision of a court of law and that the proceedings before a Tribunal are not judicial proceedings.

16. I also find support for this view in the last paragraph of section 11, sub-section (3) of the Industrial Disputes Act in which the following passage appears :

> "and every inquiry or investigation by a Board, Court or Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code."

I would draw attention to the fact that a proceeding before an Industrial Tribunal is described in this portion of section 11, sub-section (3) as an 'inquiry' or 'investigation'. The Act is careful not to describe it as a judicial proceeding. Further, it says that it shall be *deemed* to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code. The use of the words "deemed to be" clearly shows that it is not a judicial proceeding but shall be treated as such for the limited purposes mentioned in the section. If the intention of the Legislature were to make the Evidence Act applicable there was nothing to prevent the Legislature saying that the inquiry or investigation should be deemed to be a judicial proceeding within the meaning of the Evidence Act.

17. Again, if the proceeding before an Industrial Tribunal were a judicial proceeding, this provision in the Industrial Disputes Act would be quite unnecessary as sections 193 and 228 of the Indian Penal Code would automatically apply. I would rely for this view on the well known legal maxim "Expressio unius est exclusio alterius". When a statute expresses that a Tribunal is a court or that a proceeding is a judicial proceeding for a specific purpose, it thereby excludes the Tribunal from being a court or a proceeding from being a judicial proceeding for any other purpose.

18. I would next draw attention to rule 25(f) framed under the Industrial Disputes Act. It says that proceedings before a Board shall be held in public. It makes no such provision for proceedings before a Tribunal. Judicial proceedings are normally held in public. The fact that proceedings before a Tribunal are not required to be held in public indicates that the proceedings are not judicial. Again section 36(3) (4) of the Industrial Disputes Act debars a party from being represented before a Tribunal by a legal practitioner unless both parties consent and the Tribunal grants leave. In judicial proceedings legal practitioners have the right to appear. It is difficult to conceive how a Tribunal can be said to be functioning in a judicial proceeding without the assistance of legal practitioners. The provisions of the Evidence Act are technical and if they applied to proceedings before a Tribunal, I can see no reason why the Legislature should deprive the Tribunal of the advice of legal practitioners in solving difficult questions of admissibility and relevancy which would arise. The exclusion of legal practitioners indicates that Tribunals are not expected to follow strictly the provisions of the Evidence Act.

19. Next, I would refer to rule 14 of the rules of the Industrial Disputes Act upon which the Bank relies. It seems to me that this rule leads to a conclusion opposite to that which the bank suggests. The rule is as follows :—

> "A Board, Court or Tribunal may accept, admit or call for evidence at any stage of the proceedings before it and in such manner as it may think fit"

The rule deals with evidence and it says that the Tribunal may accept or admit evidence in such manner as it thinks fit. This rule shows that the Tribunal is not bound by the provisions of the Evidence Act and that it is free to adopt its own procedure as regards evidence.

20. Having regard to the provisions of the Indian Evidence Act, the Industrial Disputes Act and the rules thereunder mentioned above and to the principles which I deduce from the general law, I am of the opinion that a proceeding before an Industrial Tribunal is not a judicial proceeding. I venture to think the views I

have expressed are supported by the principles enunciated or implied in the decisions in the following cases :—

"Chandra Bhan Bilotia V. Ganpatrai & Sons. I.L.R. 1948-IC.156, 164 *et seq*"

"Suppu V. Govinda Charyar. I.L.R. 11-Madras, 85, 87"

"Queen Empress V. Tulja & Sons. I.L.R. 12, Bombay, 36, 42, 43, and"

"Hari Charan Kundit V. Kanshi Charan De—I.L.R. 1940-Calcutta, 15."

The first two cases deal with the provisions of the Indian Arbitration Act, the third case deals with the provisions of the Indian Registration Act and the fourth with the provisions of the Bengal Agricultural Debtors Act. It is true that none of these cases relate to the provisions of the Industrial Disputes Act but the principles there laid down throw some light on the controversy. I repeat again that though the Evidence Act does not apply, nevertheless, the Tribunal is not permitted to act arbitrarily. It must observe the principles of natural justice and hear the parties before deciding upon what evidence it should admit. An illuminating exposition of the meaning of 'natural justice' is to be found in a judgment of Lord Haldane in the case of Local Government V. Arlidge (L.R. 1915, A.C. 120, 138). I realise that I have devoted a large portion of this award to the discussion of the applicability of the Evidence Act to the proceedings before this Tribunal, but I feel that it is necessary to do so as it is an important question of adjective law regarding which there is no direct provision in the Industrial Disputes Act and regarding which, as far as I am aware, there is no authoritative or direct decision.

21. I shall now deal with the merits of the respective cases of the parties before me. Mr. Chari has in the course of his arguments traced the history of industrial legislation. His disquisition on this matter has been most illuminating and helpful to me, but I do not think it necessary to reproduce all that he has said in detail. I shall deal with the history of this legislation in a short compass. The theory of "laissez-faire," namely, that the capitalist and his employee may enter into a free contract no longer applies in industrial matters. The early legislation on this point from time of Henry VIII was in favour of the capitalist. The capitalists tried to prevent labour organisations being formed and to get as much work as possible from their workmen. Legislation helped the employer and declared labour organisations to be illegal and fixed the working hours in favour of the capitalist. This state of affairs prevailed till 1848 when the Chartist Movement started. The movement was a struggle between labour and capital. Labour fought for its rights and strove against the application of the then existing law regulating the relationship between master and servant to industries. This led to the development of 'industrial law' and gradually the principle came to be established that an Industrial Tribunal should consider social consequences in deciding a case and should not like civil courts confine itself to the enforcement of the terms of the contract between the parties irrespective of the social consequences which would result. The well known treatise by Teller gives the history of this trend. Gradually, the State recognised the right of collective bargaining so far as the relationship between capital and labour regarding industry was concerned. Legislation was directed not for the purpose of enforcing the terms of specific contracts but for the purpose of preventing industrial disputes and settling them. In India since 1937, and during the period of the last war, it was felt that an all out effort was needed for increased production and State intervention in industrial disputes became more pronounced as the responsibility of the State regarding industrial relations came to be realised (*See* the Preface of the Treatise—"Industrial Awards in India, An Analysis", published by the Ministry of Labour, Government of India). It is now well recognised that so far as industry is concerned, it is necessary to have special Tribunals to settle disputes so that industrial production may not be hampered. Bearing these facts in mind, I propose to investigate the question whether the dismissal of these 150 persons was wrongful in the sense that it offends against industrial law and practice.

22. Mr. Chari, on behalf of the workmen, began his arguments by giving a history which led to the present dispute. This is what he says : The bank from the year 1949 strove to crush the predecessor of the Federation which started under the name of the Delhi Employees' Union and one of the methods of doing this was to form a puppet union called the Punjab National Bank Workmen's Union. The course of the struggle between the bank and the predecessor of the present Federation would be evident from the correspondence between the bank and the Employees' Union and also from other factors. Eventually, the puppet union was put out of action and the present Federation came to be recognised. The activities of the bank in this respect and also in respect of certain actions taken against the employees indicate that it was bent on destroying the Federation and did not

hesitate to employ unfair labour practices to do so. The present dispute started on account of the action taken by the bank against one of its employees named Sabbarwal. He had been working in the bank since the year 1946 and had done good work. He joined the Delhi Employees' Union in 1949 and became the Secretary. This fact was intimated to the bank. After that, it started treating Sabbarwal unfairly and harassed him in all possible ways. Sabbarwal had leave to his credit and on the 3rd of April 1951, he applied for leave from the 4th to the 9th April 1951. The letter is Exhibit No. F-57. No reply was sent to it and Sabbarwal left Delhi for Bombay in anticipation of sanction of leave. On the 9th of April 1951, Sabbarwal writes a letter to the bank stating that for unavoidable reasons he could not return and asked for extension of leave till the 14th of April. He was allowed to work in the bank on the 14th and 16th April 1951, 15th of April being a Sunday. On the 16th of April, he made a further application for leave and the bank instead of granting it, suspended him. This led to a pen-down strike in all the Delhi branches of the bank. The strike spread throughout India in all its branches. On or about the 22nd of April, a notice was published in the papers by the bank adverting to the strike and asking the workers to report for duty at the latest by 10 A.M. on Wednesday the 25th and stating that if they did not do so, it would be taken that they had voluntarily ceased to be the bank's employees and their services would be deemed to have been terminated as from that date. It was also stated in that notice that any one wilfully failing to report for duty would not be allowed to resume work at any other time. It also assured all loyal employees, who had by reason of intimidation or threat stayed away, that they would get all adequate protection on their return to duty. This notice has been exhibited, being Exhibit F. 9. The workmen did not return to duty and on the 26th of April 1951, the bank published a notice in the Tribune stating that it had terminated the services of those employees of its branches in East Punjab, PEPS. Union, Himachal Pradesh and Jammu and Kashmir State, who failed to return to duty on the date given in the previous notice. The bank also invited any former employees whose services were terminated by this notice but who wished to rejoin, to apply and explain their action for staying away. This is Exhibit F.8. The workmen did not rejoin and rightly so, because they did not want to act as 'black-legs'. The workers appealed to the Hon'ble Prime Minister for his intervention in the dispute and upon his intervention, the bank agreed to take back the strikers except 150 persons of whom 140 are concerned in Case No. 1, the other 10 being concerned in Case No. 2. It should be noted that, at this stage, the bank did not at all mention whose these 150 persons would be but said that it would give the names later. The bank then sent a number of circulars to all the branch offices calling for reports as to the members of the staff who were undesirable persons for re-employment on various grounds which will appear from the circular which is Exhibit F.14. Its intention was to exclude active trade unionists and office bearers of the Federation, although the language in the circular is couched in terms which do not directly express this intention. The Government, when it came to an agreement with the bank about the re-employment of the strikers, told the bank that the cases of persons excluded from re-employment would be referred to an Industrial Tribunal. The workers were no party to this agreement and they protested to Government. Nevertheless, the arrangement was carried through. The Government then referred the cases of these 150 persons to this Tribunal for the settlement of the industrial dispute between the workmen and the bank.

23. This is the short history of the case as given by Mr. Chari and leaving aside expressions of his opinions, it represents the state of affairs prior to this reference in a substantially correct manner. I shall now set forth in broad outline the arguments of Mr. Chari in support of his contention that these 150 persons should be reinstated and granted other reliefs as well.

24. It is as follows.—The strike was lawful and justifiable. Even if it be held that the strike was illegal and unjustifiable, the strikers were guilty of misconduct and before their dismissal, it was incumbent upon the bank to draw-up charge-sheets against the strikers and hold enquiries. The failure of the bank to adopt this course was against the principles of natural justice and the dismissal was, therefore, wrongful. As regards Sabbarwarl, the position is similar. He was suspended without any charge-sheet being drawn up against him and without the holding of an enquiry. Such suspension is not permissible and therefore, the strikers were justified in protesting against this arbitrary action on the part of the bank by going on strike. Further, "the question is not whether the strike was justified or not, because all strikers were taken back except 150 persons The question is, whethere or not. not taking back 150 persons amounted to discrimination and victimization of those persons".

I have put these words in inverted commas because they were the actual words used by Mr. Chari in his arguments before me..

Mr. Chari then went on to say that by inviting all the strikers to return to work, the bank condoned the strike and therefore, it had no justification, when taking back the strikers, to exclude 150 persons. These are the main arguments addressed to me by Mr. Chari. The further detailed arguments will be dealt with later.

25. Mr. Radhe Lal Aggarwal's argument was as follows.—The strike was illegal and unjustifiable for more than one reason. A pen-down strike is always illegal, as it amounts to tresspass on the property of the bank and dispossession of the bank. Further, the strike being in contravention of section 23(b) of the Industrial Disputes Act, it was illegal and therefore, the dismissal of the strikers was perfectly justified. On the facts and circumstances of this case, no charge-sheet or enquiry was at all necessary before the dismissal of the strikers In any case, the notices published in the papers addressed to the strikers were sufficient to inform them of the reasons why action was being taken against them. The notices are Exhibits, F. 6, F 6-a, F. 8. F. 8-A, and F. 9. There was no necessity for the drawing up of charge sheets and for the holding of enquiries. As regards the refusal of the bank to take back the 150 persons involved in this dispute, it was perfectly justified and did not constitute any unfair labour practice. The bank under pressure of Government took back all the strikers except these persons, although it was not in any way obligatory upon the bank to do so. This act of generosity on the part of the bank cannot be a valid reason for holding that the bank was unfair in refusing to take back 150 persons who had been rightly dismissed.

26. Mr. Radhe Lal also put a large number of documents to show that the bank all along was acting fairly by its workers and that the attitude of the Federation and the Union was grossly improper. The Federation and the Union took up a truculent attitude against the bank, not so much for the protection of the workers but for the purpose of destroying the bank and their correspondence with the bank contained vulgar and personal abuse which could, in no circumstances, be justified.

Both he and Mr. Chari cited a number of cases and passages from Ludwig Teller in support of their views. I append a list of these cases to this award.

27. I shall take up for consideration first the question whether the strike was illegal or not because the decision of this dispute will hinge largely upon the decision of this point. The contention advanced by Mr. Aggarwal, on behalf of the bank, is that the strike is illegal by reason of the provisions of section 24 read with section 23(b) of the Industrial Disputes Act, as it commenced during the pendency of proceedings under the aforesaid Act before a Central Government Industrial Tribunal at Calcutta presided over by Shri K. S. Campbell Puri and within the period of two months after the conclusion of the aforesaid proceedings. Certain dates will now have to be mentioned. The strike with which I am concerned started on 17th April 1951. The proceedings before the Tribunal presided over by Shri K. S. Campbell Puri commenced on February 21, 1950 when the dispute was referred to it, and concluded on August 28, 1951 when this award was published. I give these dates as the dates of the commencement and conclusion of the proceedings before Shri Campbell Puri having regard to the provisions of section 20, sub-section (3) of the Industrial Disputes Act which says that proceedings before a Tribunal shall be deemed to have commenced on the date of the reference of dispute for adjudication and shall be deemed to have concluded when the award is published by the appropriate Government under section 17. It is clear, therefore, that the strike with which I am concerned took place during the pendency of proceedings before the Campbell Puri Tribunal and before the expiry of two months after the conclusion thereof.

28. I shall now set out the relevant provisions of section 23 It is in the following terms:—

> "23. *General prohibition of strikes and lockouts.*—No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out.
>
> (a) * * * *
>
> (b) during the pendency of proceedings before a Tribunal and two months after the conclusion of such proceedings: or
>
> (c) during any period in which a settlement or award is in operation in respect of any of the matters covered by the settlement or award.

I next turn to section 24 which states as follows:—

> "(1) A strike or lockout shall be illegal if—
>
> (i) it is commenced or declared in contravention of section 22 or section 23;"

If these sections are applicable to this strike, then there can be no escape from the position that the strike is illegal. Mr. Aggarwal, contends that these sections are applicable and he relies upon the case of "Pravat Kumar Kar and others *versus* William Trevelyan Curties Parker and another" (54-Calcutta Weekly Notes, page 84) decided by a Bench of the High Court at Calcutta, presided over by Sir Trevor Harries, Chief Justice. Mr. Chari's contention, on the other hand, is that the case has been wrongly decided and that it is not binding on this Tribunal. It is quite true that the decision is not binding on this Tribunal but, nevertheless, it must be treated with the greatest respect as throwing light on the law connected with this question.

29. I shall now examine in detail the arguments adduced on either side regarding the question whether the strike is illegal or not. It was contended by Mr. Chari that the origin, cause, and subject matter of the present strike is entirely different from those connected with the strike with which Shri Campbell Puri had to deal. He says that in order to make section 23(b) applicable, it must be shown that the strike in the case before me is in respect of matters covered by the Award of Shri Campbell Puri. He also contended that all the parties involved in the present case should be involved in the prior case. Another branch of his argument is that the bank nowhere in its pleadings stated that the strike was illegal by reason of the operation of the provisions of section 23(b) and 24 of the Industrial Disputes Act and that the bank should not be allowed at this stage to justify the dismissals by asserting that the strike was illegal by reason of the above mentioned provisions of the Industrial Disputes Act.

30. I shall take up for consideration the second point. Mr. Aggarwal's answer to Mr. Chari's argument is that in paragraph 4 of the bank's written statement it was alleged that the strike was illegal. He admits that the particular grounds now taken to establish illegality were not mentioned in the bank's pleadings, but he says that it is not necessary in pleadings to plead law and that, in any event, if there has been an omission, it is technical and the bank should not be prevented from relying upon the provisions of section 23(b) and 24 for establishing that the strike was illegal. Paragraph 4 of the written statement of the bank which relates to this question is as follows:—

> "That the period to which the strike alluded to in the Statement of Claim relates, was a period during which the Award of the All India Industrial Tribunal (Bank Disputes) was in operation notwithstanding the fact that the Supreme Court of India had declared this Award and the connected Awards to be legally invalid. The strike, therefore, was illegal, prohibited as it was by the plain terms of section 23 of the Industrial Disputes Act, 1947. Also, the strike was wholly unjustified and was resorted to not with a view to obtain relief for the petitioners or others but with a view to paralyse the business of the bank and scare away its customers so that under the pressure of coercive methods and criminal acts, which the petitioners employed, the bank should be constrained to submit to their illegal and extortionate demands. The strike was also illegal because it was without notice".

It is quite clear from this paragraph that the Bank was not relying in its pleadings upon the provisions of section 23(b), but was relying upon the provisions of section 23(c) which prohibits a strike "during any period in which a settlement or award is in operation in respect of any matters covered by the settlement or award", In paragraph 4, the bank clearly says that the strike was illegal because it took place at a time when the award of the All India Industrial Tribunal (Bank Disputes) was in operation in respect of matters covered by the award. The reference is to the award of a Tribunal presided over by Shri K. C Sen, retired Judge of the Bombay High Court. No reference is made in this paragraph of the written statement to the proceedings before Shri Campbell Puri.

31. It is now admitted that the strike cannot be held to be illegal on account of the proceedings which were the subject matter of the All India Industrial Tribunal (Bank Disputes) presided over by Shri K. C. Sen. That dispute was referred to the Sen Tribunal on the 13th of June 1949 and the award was published in the Gazette on the 15th of May 1950. The present strike, as I have stated before, commenced on the 21st of April 1951. It was, therefore, not a strike which commenced during the proceedings before the Sen Tribunal nor was it a strike which commenced within two months after the conclusion of those proceedings. Having regard to the date of commencement of the proceedings before the Sen Tribunal and the date of its award, it cannot be said that, owing

to the proceedings before the Sen Tribunal, the present strike is illegal by reason of the provisions of section 23(b). Section 23(c) also would not apply. That sub-section prohibits a strike during any period in which a settlement or award is in operation in respect of any of the matters covered by the settlement or award. When this strike commenced, the Sen Award had been set aside by the Supreme Court and was, therefore, not in operation. Mr. Aggarwal therefore based his contention regarding the illegality of the strike on the proceedings before Shri Campbell Puri Tribunal. What I have to decide is whether he should to allow to make out this case when it was not specifically made in the written statement where the allegation of illegality was founded on a different ground. In my opinion, the Bank should be permitted to rely upon the proceedings before the Tribunal presided over by Shri Campbell Puri in order to prove that the strike is illegal. The plea of illegality was actually taken, although on a different footing. Again, it cannot be said that the other side has been prejudiced by the new ground urged on behalf of the Bank. There is really no element of surprise. The facts on which the illegality of the strike is now being based are admitted facts and they are not in any way being denied or challenged. If this matter was before the ordinary courts of law, the utmost that could be said on behalf of the workmen would be that the case could not proceed without the pleadings being amended. It is now well established by judicial decisions of the regular courts of law and also by the Privy Council that an amendment of pleadings in circumstances such as these would certainly be allowed and the case would proceed after such amendment. There are numerous decisions which say that strict rules of pleadings should not be enforced in *mofussil* courts where the technicalities of correct pleadings are not understood and a certain amount of latitude has always been allowed in such cases. If this latitude is allowable in judicial proceedings before civil courts, 'a fortiori' it should be allowed in proceedings before this Tribunal as the proceedings are not strictly judicial and the Tribunal is not a court. I hold, therefore, that strict rules of pleadings should not be imported into the proceedings before a Tribunal like the present one. The Bank's case of illegality is based on facts which, as I have stated before, are admitted and it would be a waste of time to direct an amendment of the pleadings and thereby delay these proceedings. I, therefore, allow the Bank to argue the point of illegality on the basis that by reason of the provisions of section 23(b) read with section 24, the strike is illegal on account of it having taken place during the proceedings before the Campbell Puri Tribunal and within two months after the conclusion of those proceedings.

32. I next take up for consideration the argument of Mr. Chari to the effect that section 23(c) will have no application because the subject matter of the enquiry before the Campbell Puri Tribunal was different from that of the present enquiry before this Tribunal. The decision of the Calcutta High Court already referred to clearly states that section 23(c) would apply, although the subject matter of the two proceedings were different. I respectfully agree with that view and the reasons given in support thereof. Section 23(c) nowhere stipulates that the proceedings before the two Tribunals should be in respect of the same matter. It is a well known legal principle that a statute must be read as it is and that words should not be added to it unless there are exceptional circumstances, *e.g* .unless meaning cannot be given to the provision of the statute without importing such words; no such difficulty arises in this case. The words and the meaning thereof are perfectly clear, there is no ambiguity. Mr. Chari says that if this interpretation be given to section 23(c), then it would be very unfair to the employees inasmuch as they would be prevented from enfrocing their just claims by a strike because of the existence of another proceeding even though such claims are not being adjudicated upon in those proceedings. The section may work hardship but I am not concerned with the policy of the law. I must decide the question in accordance with the statute although it may work hardship. The removal of such hardship is a function of the Legislature and not of this Tribunal. That the interpretation given to section 23(b) by Mr. Chari is not the correct one becomes evident from the provisions of section 23(c). In that sub-section it has been expressly stipulated that a strike is prohibited only if it is in respect of the matters covered by the settlement or award of the previous Tribunal. The introduction of this restriction in sub-section (c) and the omission of it in sub-section (b) shows that the omission is deliberate. If the interpretation put by Mr. Chari was intended by the Legislature, there was nothing to prevent it from putting a similar restriction in section 23(b) as is contained in section 23(c). Mr. Chari also attacked the judgment of the Calcutta High Court by saying that words were introduced by the Court into section 23(b) which were not there and he refers me to the passage in which the Chief Justice says that in order that section 23(b) should apply, it must be shown that both the

disputes should arise in the place 'used' for carrying on the industry. This restriction, Mr. Chari says, is absent in section 23(b) and if it could be imported, there was no reason why the restrictive terms contained in section 23(c) should not also be imported into the provisions of section 23(b). I am not impressed by this argument. The learned Chief Justice gave reasons for holding this view by referring to section 2(n) of the Industrial Disputes Act, where the words "an industrial establishment" are used. Bearing in mind, the context in which those words are used in section 2(n) the Chief Justice held that the words 'industrial establishment' in section 23 must have the same meaning as they have in section 2(n) and he says that the meaning of those words is that a person should be 'employed in some particular place', *vide* observations of the Chief Justice in the case reported in 54-Calcutta Weekly Notes, at page 89. All that the Chief Justice was doing was following the well known principle of giving the same meaning to words used in different parts of a statute wherever that was possible. He was not adding any words to section 23(c) but interpreting it in accordance with the well-known rules of interpretation of statutes. I hold, therefore, that this contention of Mr. Chari is not of any substance.

33. I take up next the contention of Mr. Chari that for section 23(b) to apply, the persons concerned in the present proceedings before me should also have been concerned in the proceedings before Shri Campbell Puri. In support of his contention, Mr. Chari refers to the circumstances which resulted in the reference to the Campbell Puri Tribunal. The history is as follows:—On the 13th of June 1949, there was a reference to the Sen Tribunal regarding disputes between the Punjab National Bank and other banks on the one hand and their employees on the other. While the proceedings in connection with that reference were pending, petitions were filed by certain employees of the Punjab National Bank and other Banks with respect to certain acts of the Bank done during the pendency of the proceedings. The Sen Tribunal held that it could not entertain those complaints inasmuch as the matters contained therein were not the subject matter of the reference made by Government to it. Thereupon, Government made a fresh reference to the Campbell-Puri Tribunal on the 21st of February, 1950. Mr. Chari's contention is that the disputes referred to the Campbell-Puri Tribunal by Government were limited to the particular disputes raised by the particular complainants before the Sen Tribunal during the pendency of its proceedings. In other words, his contention is that the subject matter of the reference to Shri Campbell-Puri were the same as the subject matter of the complaints before the Sen Tribunal and the complainants were also the same. In support of this view, he drew my attention to Schedule II of the reference made to the Campbell-Puri Tribunal where after stating the subject matter of the dispute, the following passage was inserted, namely, "specific cases to be cited by employees." This, according to Mr. Chari, shows that the Campbell Puri Tribunal was entrusted to settle only the disputes which were the subject matter of the complaints before the Sen Tribunal and that the persons involved in the reference of the Campbell Puri Tribunal were the same as those who filed the petitions before the Sen Tribunal. He contends that unless those persons are the disputants before me and unless the subject matter of those disputes are also the same, the present strike could not be declared illegal by placing reliance upon section 23(b) of the Industrial Disputes Act. He, therefore, suggested that the records of the Sen Tribunal should be called for in order to ascertain these matters.

34. In my opinion, these contentions of Mr. Chari cannot be supported. Section 23(b) nowhere says either that the disputes or the disputants must be the same in both Tribunals. There are in my opinion two reasons for enacting section 23(b). Firstly, the Legislature considered that it was desirable that industrial peace should be maintained during the pendency of industrial proceedings and that this could be ensured by prohibiting any strike during the proceedings. This is the reason why strikes started during industrial proceedings are not permitted. The second object of the sub-section is that an award made by a Tribunal should be allowed to mature and have effect so that it may bring the disputants together and restore amity. It is for this reason that the Legislature enacted that even after an award was made, two months should be allowed to elapse before a fresh dispute is raised. The object of section 23(c) is somewhat different. It is based on the legal maxim that nobody should be vexed twice with regard to the same matter. Once a dispute is settled by an award, persons should not be allowed to raise the same dispute so long as the award is in force. The maxim *"nemo debet bis vexari"* is in my opinion the foundation of section 23(c). It should be noticed that it provides that so long as an award is in force, the matter decided by that award should not be reagitated and the parties should consider themselves to be bound by a decision of their disputes by a competent authority.

35. I would point out further that in the present case, the parties before the Campbell Puri Tribunal and those before me are the same so far as the Punjab National Bank is concerned. I have held in a previous order already referred to, *viz.* Order No. 6 of 24th September 1951 that the disputants before me are not the bank on the one hand and the 150 employees mentioned in Schedule II on the other but that the disputants are the bank on the one hand and all the workmen employed by the bank on the other. In the order referring the industrial dispute to Shri Campbell Puri, it is also stated that the dispute is between the banking companies mentioned in Schedule I on the one hand and their employees on the other. In Schedule I one of the banks involved is the Punjab National Bank Ltd. Accepting for the sake of argument that Mr. Chari's contention that the disputants before the Campbell Puri Tribunal and those before me should be the same for section 23(c) to apply as correct, there could be no objection on that score to the application of secion 23(c) insmuch as he disputants beffore me are the same as the disputants before the Tribunal presided over by Shri Campbell Puri so far as the Punjab National Bank is concerned.

36. The reference by Mr. Chari to the words "specific cases to be cited by employees" contained in schedule II do not at all affect the matter. By inserting this clause, Government was not limiting the scope of the enquiry before Shri Campbell Puri but was expressing its desire that in those proceedings specific cases should be cited by the employees. This is made additionally clear by the note appended to Schedule II which runs as follows: "This list is not intended to be exhaustive." I do not think therefore that the contention of Mr. Chari based on the clause regarding 'specific cases' helps him in any way. I hold, therefore, that the present strike was illegal by reason of the provisions of section 23(b) of the Industrial Disputes Act.

37. Holding as I do that the strike is illegal, the next question which I have to decide is whether in spite of such illegality, the 150 persons mentioned in schedule II should be reinstated or given any other relief. One of the contentions of Mr. Chari is that even if the strike be illegal, this Tribunal should reinstate the above mentioned employees because the order of dismissal was wrongful by reason of the fact that the Bank did not formulate the charges against these strikesrs in a chargesheet or gave them an opportunity to explain their conduct by holding an enquiry in their presence. His contention is that an illegal strike is merely misconduct and that that being so, the well known principle should apply, namely, that an employee should not be dismissed for misconduct without a charge-sheet being drawn up and without a formal enquiry being held in the presence of the employee. He referred to a number of cases where it has been held that a dismissal for misconduct would be wrongful unless the dismissal were preceded by a chargesheet and a proper enquiry in the presence of the alleged wrong doer. He referred me to the decision of the Appellate Tribunal in the case of Buckingham and Carnatic Mills Ltd. reported in 1951-II, Labour Law Journal, page 314, where certain general principles have been laid down for the guidance of Tribunals. I must say with great respect that the award in that case has been of the greatest value to me in understanding the principles which should guide me in deciding industrial disputes, but I do not find it anywhere stated that in the case of an illegal strike the strikers cannot be dismissed without a charge-sheet or enquiry on the ground that an illegal striko amounts to misconduct. The learned Tribunal pointed out that there had been a spate of conflicting decisions by different Tribunals. Some of them were accepted as correct and some were not. In order to ensure uniformity of decisions, the Tribunal laid down certain general principles with great clarity but it was careful to observe that these general principles were not exhaustive. The decision of the Tribunal does not purport to crystallize the law by laying down these general principles and indeed it would not be possible or desirable in any particular decision to do so. Where the cause and the circumstances leading to the strike are admitted and where the order of dismissal is based solely upon those admitted circumstances, there can, in my opinion, be no necessity for the formulation of a charge-sheet or for holding an enquiry. I shall give a simple example. A workman beats the manager of an industrial concern for no rhyme or reason. He is instantly dismissed. He then raises a dispute alleging that the dismissal was wrongful and before the Tribunal he admits that he beat the manager for no rhyme or reason. In such a case, would it be necessary for the Tribunal to reinstate the workman and direct the management of the industrial concern to draw up a charge-sheet and hold an enquiry? It certainly would not. Such an order would constitute a piece of extreme futility. In the present case, I have held upon the admitted facts that the strike was illegal. My interpretation of the law regarding the illegality of the strike may be wrong but it is based on admitted facts which do not require further proof or enquiry. If, therefore, these 150 persons were dismissed because they went on an illegal strike, the dismissal

cannot be considered as wrongful only because there has been no charge-sheet or enquiry. Of course, it is open to the workmen to allege that the dismissal is wrongful on other grounds but that is another matter. I am dealing with the ground urged by Mr. Chari that the dismissal is wrongful because of the absence of a charge-sheet or enquiry and that owing to the absence of these requisites, the employees should be reinstated. Mr. Aggarwal cited a number of cases to show that in certain types of misconduct no charge-sheet or enquiry is necessary. It will serve no useful purpose to examine these cases, because in most of them the question of the absence of a charge-sheet was not raised and none of them are binding upon me. I hold, therefore, that the dismissal of these persons cannot be considered to be wrongful merely on the ground that there was no charge-sheet or enquiry.

38. The next question which arises is whether a person guilty of taking part in an unlawful strike is liable to dismissal. Mr. Chari's contention is that the penalty for an unlawful strike is provided in the Industrial Disputes Act in Chapter VI and that nowhere in the Act is it said that the consequences of an illegal strike should necessarily be an order of dismissal. He next points out that in section 34, it is provided that no court shall take cognizance of any offence punishable under the Act save on the complaint made by or under the authority of the appropriate Government and urges that until there is a prosecution and a finding by the court that the striker is guilty of the offence of indulging in an illegal strike, no action should be taken against him by the employer on that score.

In answer to the first point raised by Mr. Chari all that need be said is that nowhere in the Industrial Disputes Act are the grounds for the passing of orders of dismissal specified. These matters have been left to the decision of Industrial Tribunals and, if I may say so, quite properly. The next point raised by Mr. Chari, namely, that on order of dismissal which is based on the ground of an illegal strike cannot be passed until there has been a conviction in respect of such strike by the Criminal Court is also, in my opinion, not sustainable. It is not in every case of an illegal strike that a prosecution need or should be launched. This is made perfectly clear by section 34 of the Industrial Disputes Act which prohibits Courts from taking cognizance of the offence of an illegal strike except upon a complaint made under the authority of the appropriate Government. The question of prosecution is not left to the employer. It is for the appropriate Government to decide whether there should be a prosecution or not. In these circumstances, it would not be justifiable to prevent an employer from dismissing an employee for having gone on an illegal strike merely because Government does not choose to prosecute such an employee. The matter may be looked at from another aspect. Even where persons have gone on an illegal strike, Government may justifiably refrain from ordering their prosecution. There may be various grounds upon which Government may think it proper to refrain from prosecuting strikers engaged in an illegal strike. In order to preserve industrial peace and to prevent further bitterness of feelings, Government may stay its hands and not order any prosecution. Again Government may be of the opinion that it is inexpedient for the ends of justice to launch a prosecution. In this connection, I would refer to the cases decided under section 476 of the Code of Criminal Procedure which deals with a matter very similar to that dealt with in section 34 of the Industrial Disputes Act. It has been held in several cases under Section 476 of the Code of Criminal Procedure that even where an offence has been committed before a court, the court should not invariably make a complaint against the offender. Before making a complaint the court should consider whether it is expedient in the interest of justice that a complaint should be made. Similarly, in the case of an illegal strike Government may not think it proper to make a complaint. The inaction of Government cannot in my opinion, have the effect of tying the hands of an employer and prevent him from dismissing strikers who have indulged in an illegal strike. It is clear from the relevant provisions of the Industrial Disputes Act that the employer is not given an opportunity of making a complaint before a Magistrate. It is only Government that can do so. This fact also supports my view that the employer cannot be held responsible for a complaint not being made with respect to an illegal strike. I am of the opinion, therefore, that Mr. Chari was quite wrong in urging that there could be no dismissal on the ground of an illegal strike because there has been no finding of a Criminal Court that the strike is illegal. It is this Tribunal which is to come to a decision on the question whether the strike is illegal or not and the Tribunal is not bound to refrain from such finding because there has been no decision on the point by a Criminal Court. In my opinion, a person guilty of indulging in an illegal strike is ordinarily liable to dismissal. I realise that an order of dismissal need not necessarily follow because the strike is illegal. All surrounding circumstances must be taken into consideration. In some cases an order of dismissal on the ground of the strike being illegal may be too harsh and

in such cases an Industrial Tribunal would be justified in mitigating such punishment. There have been cases where strike have lasted only for a few hours or for a day and Tribunals have held that the strike being merely a technical or nominal one, the strikers did not deserve the punishment of dismissal although the strike was an illegal one. Each case must be decided upon its particular facts. What are the circumstances in the present case? The strike could by no means be described as a technical or nominal strike. It was a very real strike and it was persisted in for a long time in spite of the Bank's invitation to the strikers to return to work. Again the strike began with a pen-down strike. Notice should be taken of this fact because as has been held in America and in our country, a pen-down strike really amounts to trespass and dispossession. By indulging in such a strike in the present case the strikers prevented the Bank from functioning or from getting other persons to carry on the work of the Bank. The Bank wanted to give evidence to show that the strikers were unruly and violent but I did not consider it necessary to go into that question and therefore, did not take evidence on it. It was admitted before me that the strike started with being a pen-down strike. It has also been admitted and proved beyond all doubts that the strike went on for a considerable period in spite of the invitation of the Bank to the strikers to resume work. In the circumstances, it was not necessary to go further into the question whether the strike was conducted in a dis-orderly or violent manner. Having regard to the finding that the strike was illegal and having regard to the other circumstances referred to above, the dismissal of the strikers by the Bank was justifiable and cannot in any way be deemed to be too harsh or severe.

39. In this connection, I would like to advert to the conduct of the parties prior to the strike as disclosed by the correspondence put in evidence to which reference has already been made in the earlier part of this award. It may be that the Bank has, in some other matters, not acted fairly by its employees, but on the whole, the correspondence discloses that the Bank took some trouble to meet the demands of the employees. Further, the tone of the letters and the other documents issued by the Bank are couched in moderate and polite language. This can hardly be said to be the case with respect to the letters addressed by the Federation to the Bank and the posters and hand-bills issued by them. The Federation did not hesitate to use badges which were highly objectionable and which were obviously intended to shake the confidence of the public with respect to the stability of the Bank. One badge is in the following terms: "Sanity of the management in LIQUIDATION paid bonus withdrawn Award Not Implemented". The word 'liquidation' is written in very bold type and the other words are in much smaller type. This is one example of the method of propaganda pursued by the Federation. This is Exhibit B. 42. I would next refer to Exhibit 8.4 which is admitted by the parties. It is written by the Secretary of the Bharat Bank Employees Union which is a constituent part of the Federation to Seth Ramkrishna Dalmia and is dated 12th April 1949. It is headed "an open letter". After making various allegations of fraud, bribery and black marketing against Dalmia, the letter proceeds to refer to the Bharat Bank which is now in liquidation and part of the assets of which have been taken over by the Punjab National Bank Ltd. This is what the Secretary of the Employees Union says :—

> "Seth Dalmia, these are a few secrets of your becoming the present financial wizard and industrial magnate in this poor wretched country. This is why Indian National Airways shares have come down to Rs. 6 while they sold at Rs. 60. WHEN YOU LAID YOUR HANDS ON THE INDIAN NATIONAL AIRWAYS. This is why the BHARAT BANK SHARES sell today at Rs. 3 while they originally cost Rs. 10 and DALMIA JAIN AIRWAYS shares today sell in the open market at Rs. 2/10/- originally priced at Rs. 10/4/- And you have now thrown your rope round the neck of Yodh Raj of the Punjab National Bank—so that the fate of Punjab National Bank is also doomed and sealed. Seth Dalmia, will you explain how you compensated L. Yodh Raj for his accommodating you with the Cash Loan of Rs. 7½ crores against the interest of his own clients in the PUNJAB NATIONAL BANK LTD?"

The virulence of the language and the personal attacks contained in the letter show the attitude of the Union. If I may say so, the Union was almost more anxious to destroy the credit of the Bank than to protect the rights of its workers. I would refer also to Ex. F. 15 written by the Federation after this strike had commenced complaining against the actions taken by the Punjab National Bank through its General Manager Lala Yodh Raj. In paragraph 3 of this letter, dated 4th May 1951, this is what the General Secretary of the Federation says:

> "The Bank management dominated by Lala Yodh Raj and his clique is not only straving the employees by denying them their moderate

benefits but also has been for the past ten years using large resources and profits of the Bank for personal gratification. Lacs of rupees of the Bank out of the profits are drawn by Lala Yodh Raj and his gang as fat salaries, high commissions, exhorbitant T.A. Bills for their personal comforts and luxuries. Another lacs of rupees are being drawn by this clique for entering into numerous shady and speculative deals for personal profits without showing them in the books of the Bank to avoid payment of due interest on such loans and contrary to Indian Banking Companies Act. Crores of rupees from the depositors and share holders money in the Bank are being fraudulently used by them for purchase, sale and floating of dozens of concerns and acquiring shares in sources of others as their personal property in gross violation of the provisions of the Indian Banking Companies Act, as safeguards for the shareholders and depositors' interest. All this is being done to satisfy their unending greed for more and more profits.

Punjab National Bank, a public concern held in trust is thus being turned by Lala Yodh Raj & Co. as their personal concern and preserve to the detriment of public trust and confidence.

Indulgence in the evasion of income tax by various underhand and black market deals, screened by various fake registered companies and window dressed balance sheets of the Bank has been and is the usual practice of Lala Yodh Raj & Co."

I do not propose to go into further detail regarding this correspondence. All I need say is that the correspondence and the other documents which have been exhibited and admitted show that the conduct of the representatives of the workers was certainly not temperate.

The next line of argument of Mr. Chari is this: It may be that the dismissal by the Bank was not wrongful but the Bank condoned the strike and thereafter took back all the strikers except these 150 persons. This action on the part of the Bank after condonation of the strike was an act of unfair discrimination and amounted to an unfair labour practice. It was tainted with the object of destroying trade unionism and therefore, this Tribunal should direct the Bank to reinstate these 150 persons.

40. I would like to point out in the first place that Mr. Chari stated the facts too broadly when he said that the Bank condoned the strike. What the Bank did was to tell the workers that if they returned within a specific period, their conduct would be condoned. There was a condition attached to this act of forbearance on the part of the Bank. That condition was not satisfied by the workers and the Bank thereafter dismissed all of them including these 150 persons. I have held in the earlier part of this award that the dismissal was not wrongful. Thereafter on the intervention of the Hon'ble Prime Minister, the Bank was prevailed upon to take back a vast majority of the strikers. But the Bank made it clear that it should have the liberty of excluding 150 of them. I do not think, for reasons which I shall presently give, that this action on the part of the Bank amounted to unfair discrimination or unfair labour practice. This is not a case of a refusal by an employer to take into service a person because of his trade union activity. Mr. Chari's contention really amounts to this. If an employer refuses to take back an employee who is guilty of illegal conduct justifying his dismissal, then, if it can be shown that he has taken back other employees who have committed the same offence, the employee who has been refused re-employment can insist on re-employment, if he can show that the employer has acted in this fashion in order to victimize the employee for his trade union activities. The argument may seem plausible but in my opinion it is unsound. The state of affairs disclosed by the facts are as follows:

41. The workers went on an illegal strike which justified their dismissal. All of them were invited to return without discrimination. On their refusal to return, all of them were dismissed without discrimination. Under pressure of Government and to buy peace, the Bank agreed to take back all these persons except 150. This is really not a case of reinstatement but of fresh employment. These 150 persons being guilty of indulging in an illegal strike cannot be allowed to say that they were entitled to fresh employment merely on the ground that they were active trade unionists or office bearers of trade unions. To allow them to say this would be to put an unjustifiable restriction on the discretion of the Bank to choose its employees. The Bank must be given latitude to employ persons whom it can trust and on whose loyalty it can depend. If these persons had committed

no offence and were new applicants for employment and the Bank refused to employ them because they were active members of trade unions or office bearers thereof, it may be that something could be said in favour of them. I am not sure, however, if even in those circumstances, the Bank could be compelled to employ such persons. Be that as it may, here the position is quite different. These persons come before the Bank with a stain upon them. They have committed an offence against the Bank. I cannot see how it can ever be held that the refusal of the Bank to engage such persons is unfair. By their illegal strike, these employees have forfeited the confidence of the Bank in their loyalty and I can see no reason why the Bank should be forced to re-employ them. They do not come with an unblemished record but branded with misconduct—misconduct against the very Bank which they wish to enter. Looked at from the objective point of view, to order the Bank to re-instate such persons would really offend against social justice and the detrimental to industrial harmony. Such an order would, on the one hand, encourage the wrong-doer thereby injuring society and it would lead employers to maintain a stern and unbending line of conduct against erring workers and prevent them from making any concessions to some of the workers who are guilty of illegal acts for fear that such conduct on their part would compel them to take back all guilty workers whose presence in the industry would be detrimental thereto. This would have the effect of retarding industrial harmony which otherwise would have been promoted by generous action on the part of the employers.

42. When giving my reasons for holding that persons guilty of an illegal strike cannot demand re-instatement, I have omitted to mention a case in which this point has been decided. It is the case of the Kirkee Cantonment Board and Kirkee Cantonment Board Kamgar Union reported in November, 1951—II—Labour Law Journal—621. It is a decision of the Labour Appellate Tribunal of India. At page 622, the following passage occurs:

> "It is conceded that if the strike was illegal, then the persons who had failed in their attempt to be restored to their previous position have no claim to reinstatement or compensation."

The learned Appellate Tribunal thereupon set aside the award of the Adjudicator directing reinstatement and payment of compensation to the strikers who had taken part in the illegal strike. I feel that this amounts to a decision by the Appellate Tribunal that, if a strike be illegal, the striker can claim no right of reinstatement or compensation. Mr. Chari, however, argues that this is really not the decision of the Appellate Tribunal but merely a concession made by the lawyer before the Tribunal. He contends that such a concession is not binding on him and therefore, this case is no authority for the proposition that a person taking part in an illegal strike is not entitled to claim reinstatement or compensation. I am unable to agree with this view. The concession is not on a point of fact but on a matter of law and if the Appellate Tribunal were of opinion that such a concession did not state the law correctly, they would not have acted upon it and in spite of such concession, would have given relief to the strikers irrespective of the incorrect statement of law made by the lawyer. I may say without impertinence that it would have been the duty of the Appellate Tribunal to interpret the law correctly and not to rely upon a concession not supported by the law. Mr. Chari, next tries to distinguish his case by reference to a passage from Ludwig Teller (Labour Disputes and Collective Bargaining, Volume II, Section 318, page 849) which was quoted by the learned Appellate Tribunal and he contends that the decision of the Appellate Tribunal in that case was based on the fact that the posts held by the strikers who indulged on the illegal strike and already been filled up. Again, I am unable to accept this interpretation. If carefully analysed, this was not the legal ground upon which the order of reinstatement and compensation was set aside. All that the Labour Appellate Tribunal did was to refer to the fact that the Adjudicator in his award had made a reference to a previous award made by him in which he quoted the passage in Ludwig Teller with approval and it went on to say that if the Adjudicator had correctly appreciated the view expressed by Ludwig Teller, he would not have ordered re-instatement or compensation, even on the basis that the strike was not illegal and that the strike was not unjustifiable. I feel, therefore, that the view which I have taken is sanctioned by the decision of the Appellate Tribunal in the above mentioned case which is binding on me.

43. Having regard to the findings arrived at by me, I am of opinion that the strike was illegal and that the strikers are not entitled to claim re-instatement, re-employment or fresh employment nor are they entitled to get any compensation.

The claim of the workmen, therefore, that these 150 persons should be re-instated and paid compensation must be disallowed.

44. I shall now deal with the special arguments in case No. 2 addressed to me by the representative of the U.P. Bank Employees Union, Agra, regarding 10 of these 150 persons. It is argued that the case of these 10 persons was quite different from the case of the 140 other persons represented by the Federation. The points of difference stressed on behalf of the Union shortly are these:

45. The men represented by this Union went on a different strike which commenced not on the 17th of April, 1951, but on the 24th of April, 1951. Before going on strike they gave notice to the Bank of their intention to do so. These facts, it is said, make the case of the Union different from that of the Federation. In my opinion, they do not. The strike of the workers represented by the Union is tainted with the same illegality as the strike of the workers represented by the Federation. It is illegal by reason of the provisions of Section 23(b) of the Industrial Disputes Act because it commenced during the pendency of the proceedings before the Campbell-Puri Tribunal and two months after the conclusion thereof. On this essential point there is no difference between the two strikes.

46. The next point is whether the giving of notice makes any difference. I cannot see how it can. Giving notice of an illegal strike does not convert it into a legal one. I hold, therefore, for the reasons which I have given at length when dealing with the case of the Federation that the strike by these 10 persons representing the Union is illegal by reason of the provisions of Section 23(b) of the Industrial Disputes Act. The conduct of these strikers was on a par with those represented by the Federation. I, therefore, hold that the 10 persons involved in case No. 2, are not entitled to claim re-instatement or re-employment nor are they entitled to get any compensation.

47. I shall now deal with certain general matters which were discussed in the course of the argument. On behalf of the Bank, it was observed that the position of a Bank was a very 'delicate' one and that certain considerations, which perhaps would not be applicable to other forms of industry, should be taken into account where banking was concerned. Mr. Chari on behalf of the Bank employees, on the other hand, contended that there was no justification for treating Banks in a special manner and that such a proposition was not laid down in any case. It is true that I have not been shown any decision where this matter has been adumbrated or discussed, but that in my opinion matters little. Although there is no decision to support the view urged on behalf of the Bank, I am fully at liberty to consider the argument and give my views thereon. In my opinion, the nature of the banking enterprise is in some important respects quite different from the nature of other industries and there are special features which have to be taken into account when dealing with a dispute between the management of a Bank and its employees. A Bank is always in a very vulnerable position. It is essential for its functioning that a Bank should inspire complete confidence regarding its stability and solvency in the minds of its constituents. The clients of a Bank often place a greater portion of their wealth in its custody and they do so because they have complete confidence that their hard earned money will be safe. It is imperative that such confidence should be maintained; otherwise, a Bank cannot function. In other industries, this element either does not exist or is not of such importance. The life savings of customers are not involved in transactions with other industrial concerns. We all know what is meant by a 'run' on a Bank. It often leads to its destruction. In other industries, the question of a 'run' on it, does not arise. It should also be remembered that sometimes a very slight cause has disastrous effect on the stability of a Bank. A small group of employees of a Bank and sometimes even a single employee may by a *sly insendo* or a mischievous whispering campaign destroy the credit of a Bank and cause a 'run' on it. The customers of a Bank become more easily nervous than the clients of other concerns. It is, therefore, necessary to remember always that a Bank can function efficiently only if it has the complete loyalty of its staff. It is for this reason that an Industrial Tribunal should hesitate before it forces a Bank to retain or reinstate members of its staff in whose loyalty it has lost faith. As I have remarked before these considerations do not apply with such force in most other concerns.

48. Another factor which is peculiary applicable to our country must also be remembered. Banking is not so well understood here as in Europe or America. People here are still apt to keep their savings in their own safes or buried underground rather than trust them to the custody of Banks. This tendency is obviously harmful to the economic prosperity of the country. It is necessary therefore to inspire people with confidence in banking and thus persuade them to deposit their money in Banks so that it may be usefully employed in promoting the industries of

the country. As has been remarked in some cases an Industrial Tribunal must in settling disputes view matters both subjectively and objectively. On the one hand it must concern itself with doing justice betewen the disputants and on the other hand it should strive to promote social justice and industrial peace so that the industrial life of the nation may develop and thereby lead to the prosperity of the country. To effect this it should, as far as possible, refrain from doing anything which would impair the growth of what I may term "Bank consciousness" in the common man. In England, America and most parts of Europe, any one who earns a decent livelihood has a Banking account. They are 'Bank conscious'. It should be the aim of bodies concerned with industrial development whether it be an Industrial Tribunal or any other body, to endeavour to make India approximate other advanced countries in this respect. This cannot be done unless care is taken to foster banking by giving protection both to the management and to the staff of Banks.

49. In deciding the question of the nature of the relief or remedy which may be given various elements must be taken into consideration. As I have stated before a Bank is an extremely important institution in the industrial life of a nation, it is as it were a reservoir, the waters of which are required for irrigating the field of industry. Upon it the growth of most industries depend. Without it industries must ultimately wither and perish. It is, therefore, necessary for me before I decide upon the final results of this case to take this fact into account. I am not concerned with the wider question of whether capitalism should exist or not or whether there should be a classless society. That is a matter for statesmen and politicians. At present the existence of the two classes, one representing capital and one labour is recognised in our State as being necessary and it is my duty as Chairman of an Industrial Tribunal to decide cases within the context of this state of affairs. It is my duty to try as far as possible to maintain peace and harmony between these two classes and I should do nothing which would tend to permit victimisation of any one class by the other. It should be remembered that left uncontrolled a workers' union may be as oppressive as capitalists who are allowed to do as they please.

50. Bearing these principles in mind, I award that the claim of the workmen to reinstatement and compensation be disallowed. The workmen will, however, be entitled to the return of the provident fund money with all accretions hereto by way of interest or contributions made by the bank or any other source. The amount shall be calculated up to the dates of the month of April 1951 on which they went on strikes. The securities furnished by the employees together with any accretions thereon calculated up to the above mentioned dates shall also be returned. There is a further point which requires consideration. The employees have been without pay from the date of dismissal for the long period during which these proceedings have been held. For this protraction of the hearing the employees are not responsible; some delay was unavoidable owing to certain formalities which have to be observed in proceedings like these. Some of it was due to the time which had to be allowed to the parties to put in their pleadings, some of it was undoubtedly due to the so far infructuous steps taken by the bank to avoid what it considered to be an illegal order passed by me granting the employees interim allowances necessitating the sending of the records to the upper courts, some of it was due to the postponements for the convenience of the parties and lastly some of it was due to the time taken by me to appreciate the intricacies of industrial law. Fortunately for a Tribunal, it is not required to pay for its slowness. I think that it is only just and fair that the employees should be awarded some relief for these delays which were not at all of their making. I have given the bank all the protection that it deserves. The employees likewise must be shown some consideration. I, therefore, direct the bank to pay to these 150 persons half of what they would have earned from the bank had they been in service throughout the period of the strike. This amount shall not only include half their salaries but also half of any other amount what would have been paid to them as bonus etc. The amount should be paid for the period from which payments were stopped to the date of the publication of this award and it shall become payable within ten days of such publication. This order may be described as a 'grand motherly' one. This was how my order granting interim allowances was described by learned Advocate appearing against my order before the Appellate Tribunal. In my opinion, a grand-mother is a very useful member of a family: her detachment often helps to settle the squabbles of the younger members of the family in a fair and equitable manner. I wish to emphasise however, that the payment ordered is not by way of compensation. Compensation may be awarded only for some wrongful act. The bank is not being directed to make this payment for any wrongful act done by it. This is a direction intended to preserve industrial harmony and for relieving the employees of distress caused by circumstances for which

no one can be blamed. In view of the award I have made, the order No. 5 passed on the 24th day of September 1951 awarding interim allowances is vacated.

51. There remains the question of costs. The usual rule in a court of law is that the successful party should get the costs of the proceedings. But I think that this stern logical rule should be diluted with a little benevolence where workmen are concerned. I, therefore, award that each party shall bear its own costs. In conclusion, I wish to express my appreciation of the lucid manner in which the subject of Industrial law was dealt with by Mr. Radhe Lal Aggarwal on behalf of the bank. He has been of great assistance to this Tribunal. I also express my thanks to Mr. Chari appearing on behalf of the workmen. All that could be said on their behalf was put with force, ability and succinctness.

This award together with the Appendices thereto is forwarded to Government for action under section 17 of the Industrial Disputes Act.

A. N. SEN, *Chairman.*

Retired Judge, High Court, Calcutta.

9th February, 1952.

APPENDIX A.

REFERENCE No. 1

ORDER

After hearing the representatives of both parties in this case and case No. 2, the following issues were framed in both the cases :—

(1) Was there a dismissal of the persons mentioned in Schedule II?

(2) If so, was such dismissal wrongful?

(3) Are the workmen or any of them named in Schedule II entitled to an order for reinstatement?

(4) If so, to what additional relief are they entitled?

(5) Are the persons mentioned in items Nos. 1, 2, 5, 6, 16, 19, 25, 27, 28, 44, 48, 72, 75, 76, 77, 80, 86, 93, 94, 95, 96, 98, 99, 101, 102, 103, 107, 109, 112, 115, 117, 118, 121, 125, 126, 128, 134, 135, 146, 147 and 149, connected with the East Punjab Employees Federation and 72, 75, 76 and 77 connected with the U.P. Bank Employees Union, workmen within the meaning of the Industrial Disputes Act? If not, has the Tribunal jurisdiction to entertain any dispute regarding them?

Mr. Anand, on behalf of the Bank, suggested that issue No. 5 should be taken up first as it was, so to speak, a fundamental issue which concerned the jurisdiction of this Tribunal to entertain these two cases. This suggestion was not opposed by the other parties and in my opinion it is an eminently sound one. I accordingly took up the 5th issue for determination and heard all the parties thereon. This order which I am about to pass regarding issue No. 5 shall govern both the cases.

Having regard to certain arguments which were addressed to me, I am of the opinion that issue No. 3 should be re-cast and I would re-cast it as follows :

Issue No. 3.—Are the persons named in Schedule II or any of them entitled to an order for reinstatement?

The re-casting of this issue has become necessary because one of the arguments of Mr. Anand was that some of these 150 persons were not "workmen" within the meaning of the Industrial Disputes Act 1947 and that therefore this Industrial Tribunal has no jurisdiction to entertain the reference. Mr. Chari, on the other hand, contended that these persons were workmen. He further contended that even if it be held, for the sake of argument, that these persons are not workmen, nevertheless, this Tribunal has jurisdiction to entertain the dispute sent to it for adjudication.

I shall first take up for consideration the argument of Mr. Anand in support of his preliminary point that this Tribunal has no jurisdiction to entertain the dispute sent to it for adjudication.

His main contention is that this reference has been made by Government for an adjudication of a dispute between the Bank and the 150 persons named in Schedule II on the footing that these 150 persons are workmen. He puts forth the view that many of these 150 persons are not workmen within the meaning of section 2(s) of the Industrial Disputes Act and that consequently the dispute is not an "*industrial dispute*" within the meaning of Section 2(k) of the aforesaid Act,

So far as these persons are concerned he adds that this Tribunal's jurisdiction is limited to adjudication of "*industrial disputes*" only and that consequently the reference by Government is incompetent. Mr. Anand's argument regarding this preliminary objection as to jurisdiction involves questions of law as well as of fact.

I shall first deal with an important question of fact *viz.* who are the disputants? Can it be said that the reference is for deciding a dispute between the Punjab National Bank Ltd., on the one hand and these 150 persons named in Schedule II of the reference on the other? In my opinion it cannot. The order of reference states that an industrial dispute has arisen between the Punjab National Bank Ltd., Delhi, on the one hand and their workmen and the All India Employees Federation, Delhi, and the U.P. Bank Employees Union representing such workmen on the other in respect of the matters specified in Schedule I of the reference. Schedule I consists of two paragraphs which are in the following terms :—

(i) wrongful dismissal of the workmen mentioned in Schedule II and their reinstatement, and

(ii) in the event of any order for reinstatement payment of wages and allowances etc. from the date of dismissal to the date of reinstatement.

Thereafter Schedule II sets out the names and occupations of 150 persons. It will be seen from this summary of the order of reference that the Government does not say anywhere that the dispute is one between the Punjab National Bank Ltd., and the persons mentioned in Schedule II. What the order says is that the dispute is between the Bank on the one hand and their workmen and the Federation and the Union representing the workmen on the other *in respect of the matters* mentioned in paragraph 1 of Schedule I *i.e.* in respect of the wrongful dismissal of the 150 persons mentioned in Schedule II. It is wrong, therefore, to say that the dispute is one between the persons named in Schedule II and the Bank. Mr. Charl on behalf of the workmen urged this point of view and I have no hesitation in accepting it as correct. It is true that these 150 persons have been described in Schedule I as workmen, but that description is really not a determining factor as regards the question as to who the disputants are. It may be that a number of these 150 persons are not workmen as stated by Mr. Anand representing the Bank : but it is not necessary to decide whether they are workmen or not in determining the point as to who the disputants are. The order clearly says that the dispute is between the Bank and their workmen and that it is this dispute which is being referred. The dispute, it is true, relates to the wrongful dismissal of the persons mentioned in Schedule II, but the dispute is not one between the Bank and these persons. Whether this reference is bad on other grounds or whether this Tribunal has no jurisdiction to entertain this reference on other grounds are matters which I shall presently discuss, but I hold that the order of reference cannot bear the interpretation put upon it by Mr. Anand. The reference does not state anywhere that the two parties to the dispute are the Bank on the one hand and the persons named in Schedule II on the other : on the contrary it says that the dispute is between the Bank and its workmen. I hold, therefore, that the validity of the reference cannot be challenged on this ground urged by Mr. Anand.

Having decided that the dispute is between the Bank and their workmen and not between the Bank and these 150 persons I now proceed to give my views on the other points involved in the objection regarding jurisdiction. Mr. Anand contends that the dispute referred to this Tribunal for adjudication is not an industrial dispute within the meaning of section 2(k) of the Industrial Disputes Act. Section 2(k) is in the following terms:

> "'industrial dispute' means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

Mr. Anand's argument is that for a dispute to be an industrial dispute it must be a dispute which is connected with the employment or non-employment or terms of employment or with the conditions of labour of *workmen*. He said that the words "*of any person*" appearing in section 2 sub-section (k) means "*of any workman*". In this connection he stresses the phrase "*with the conditions of labour*" appearing in the last part of section 2(k) of the Industrial Disputes Act and says that the use of the word "*labour*" necessarily shows that "*any person*" must be a labourer or workman. His further argument is that many of the 150 persons named in Schedule II are not labourers or workmen within the meaning of section 2(s) of the aforesaid Act and that therefore the dispute is not an

industrial dispute. I give below the definition of workman contained in section 2 sub-section (s) of the Industrial Disputes Act:—

> " 'workman' means any person employed (including an apprentice) in any industry to do any skilled or unskilled manual or clerical work for hire or reward and includes, for the purposes of any proceedings under this Act in relation to an industrial dispute, a workman discharged during that dispute, but does not include any person employed in the naval, military or air service of the Government."

As I have indicated before Mr. Chari appearing on behalf of the workmen stated that the question whether these 150 persons or any of them are workmen or not was not really germane to the question of jurisdiction. He was prepared to argue that even if these 150 persons were not workmen, nevertheless, the dispute was an industrial dispute and this Tribunal is clothed with jurisdiction to decide it.

I am in entire agreement with Mr. Chari's view. I am quite unable to appreciate Mr. Anand's interpretation of the words "*of any person*" appearing in section 2(k) of the Industrial Disputes Act. The legislature uses the words "*of any person*". If Mr. Anand's contention be correct there was nothing to bar the legislature using the word "*of workman*" instead of the words "*of any person*". I have been asked to construe the words "*of any person*" as "workman" because of the phrase "*with the conditions of labour*". Labour, says Mr. Anand, means manual labour or clerical labour. On this ground he says that "*any person*" means a labourer or workman.

There is a well known rule that in interpreting an Act the Court should not eviscerate it by taking sections and sub-sections separately and divorcing from the rest of the Act. To give effect to Mr. Anand's argument would not only amount to offending against this principle, it would also amount to eviscerating a section of an Act by isolating phrases and words of the section. Section 2 sub-section (k) must be read as a whole. It would be wholly unjustifiable to interpret certain words of the section by taking them out of their context. I should have thought that even a cursory examination of section 2(k) would expose the fallacy of Mr. Anand's argument. I have quoted this section and on examination of it clearly shows that the interpretation sought to be put upon it by Mr. Anand is erroneous. The section says that an industrial dispute means any dispute or difference between employers and their workmen or between employers and employers or between workmen and workmen. It adds that this dispute must be connected with the employment or non-employment or terms of employment or with the conditions of labour of "*any person*". If the section instead of saying "*of any person*" had said of any "*such person*" then there would be some substance in Mr. Anand's argument because the use of the word "such" would refer back "*any person*" to employers and workmen, but the section deliberately omits that word and it enlarges the scope of the definition of an industrial dispute by including within it a dispute between employers and their workmen regarding the employment or non-employment etc. of persons other than employers or workmen.

Mr. Anand says that a too literal or restricted meaning should not be given to the words "*of any person*" because if this is done it would lead to an absurdity. He gives an instance in support of his view by saying that if any person were to embrace all persons whatsoever, then if the workmen of an industry object to the pay and emoluments of a Judge and raise a dispute regarding this, it would amount to an industrial dispute. He seeks to prove his point of view by employing the device of "*reductio ad absurdum.*"

I am not at all impressed by this argument. I can hardly conceive of a workman raising a dispute regarding the pay of a Judge. If they do so it will be open to the Government to refuse to send the dispute for adjudication. If owing to any mistake such a dispute is sent to a Tribunal I have no doubt that the Tribunal would decide against the workmen. Mr. Anand says that Judges and Government often make erroneous decision, that is quite true, but it is reasonable to suppose that in framing an Act the legislature acts on the assumption that the Courts and Government have a modicum of sense and not on the assumption that these authorities are just Robots without any brains. I am of the opinion that it is not necessary to decide whether all or any of the persons mentioned in Schedule II are workmen for the purposes of this preliminary objection. It is quite clear from the pleadings, and indeed Mr. Anand admits, that these 150 persons are employees of the Bank: there is therefore no such preposterous claim made by the workmen as would justify me in rejecting this reference "*in limine*".

Mr. Chari said that he was prepared to show further that these 150 persons were workmen within the meaning of section 2(s) of the Industrial Disputes Act. He also contended that the conduct of the Bank estopped it from asserting that these 150 persons were not workmen. In support of this plea of estoppel he refers to the letter of May the 9th (Ex 2) by which the Bank submitted the 150 names to the Government. He says that this act of the Bank estops them from asserting that these persons are not workmen. I am not at all impressed by this argument. The question of estoppel depends on certain circumstances which are stated in section 115 of the Indian Evidence Act. Broadly speaking there must be a representation made by the person sought to be estopped to the person pleading estoppel. Further the representation must have the effect of making the person to whom the representation is made do certain acts as a result of such representation. These ingredients of an estoppel are absent. Next Mr. Chari says that the consent of the Bank to the proposal of Government to refer cases of these 150 persons to an Industrial Tribunal estops the Bank from asserting that these persons are not workmen. Here again I am of the opinion that no estoppel arises. There was no representation made to these 150 persons or to any of the workmen. The discussion was between the Bank and Government and in those discussions neither these 150 persons nor any of the workmen or their representatives took part. The consent given by the Bank to the Government cannot have the effect of imposing an estoppel on the Bank in respect of this matter. This disposes of the plea of estoppel taken by Mr. Chari.

Next he points out that on various occasions other Tribunals and Conciliation Boards treated persons of the description of these 150 persons as workmen. He refers to the award of the "All India Industrial Tribunal (Bank Dispute) on the Industrial dispute with 205 Banking Companies and their Workmen". At page 312 of the Award the Tribunal held that an Accountant is a workman. It also held at page 320 that a Sub-Manager is a workman. He further relied on the report of the "Conciliation Board of the United Provinces (Banks)" reported in the U.P. Gazette of 18th April, 1949. Another case relied upon is the case of "The Patna Bankipore Water Works (Labour Law Journal August, 1949, pp. 400 and 403)." These judgments must undoubtedly be treated with the greatest respect as affording illumination but they are not binding on this Tribunal. Mr. Chari faintly suggested that these judgments operate as resjudicata. He, however, soon gave up this point as it is clear that they cannot operate as resjudicata. Next he argues that on the basis of the well known principle of 'Stare Decisis" the term "*workman*" should be given the meaning which a long string of decisions has given to it. I do not think that this principle can be invoked yet as the law regarding this point is still in a state of flux. Consequently this Tribunal must come to its own decision on this point, always, however, considering previous decisions as throwing light on the matter.

Having regard to what has been said above I hold that it is not necessary at this stage to decide whether all or any of the persons named in Schedule II of the reference are workmen or not. It may be that this point will arise for decision at a later stage of this case, but it is not at all necessary to decide this point for the determination of the preliminary objection regarding jurisdiction.

I hold that Government was fully competent to make a reference of this dispute to this Tribunal and that this Tribunal has ample jurisdiction to entertain the dispute. The preliminary point therefore fails and issue No. 5 is decided against the Bank.

Dated the 24th September, 1951.

A. N. SEN, *Chairman*,
Industrial Disputes Tribunal, Delhi.

APPENDIX B

List of case laws cited by Mr. Aggarwal

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5. 10—Madras—pp. 154 (Venkatachala Pillay & Others)

6. A.I.R. 1951 Punjab—pp. 49-51 (Kapoor Singh *vs.* Jagat Narayan).
7. A.I.R. Madras 1935—p. 673 and 676.
8. 1940 Calcutta—p. 286 (Haricharan *vs* Kanshi Ram).
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10. 5 Calcutta—pp. 744 and 751 (Lekhraj Kaur *vs.* Mahapalsingh & Raghubans Kaur *vs.* Mahapalsingh).
11. Sen's Award—All India Industrial Tribunal (Bank Disputes Government Publication 161).
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21. 1950—(March) Labour Law Journal p 277 (Maxwell Engineering Works—*vs.* their workmen).
22. 1950—(March) Labour Law Journal p. 280 (certain Tailoring Concerns Mathural, *vs.* their workmen).
23. 1950 (March) Labour Law Journal p. 305 (Indian Leaf Tobacco Development Co. Anaparti *vs.* Their Workmen).
24. 1950—November Labour Law Journal p. 1136 (The Calcutta Pinjrapole Society *vs.* their workmen).
25. 1951—Labour Law Journal August—p. 153 Dalmia Cements Ltd. *vs.* their workmen.
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49. 1949 (September)—Labour Law Journal p. 576 (Electro Mechanical Industries Ltd. *vs.* their workmen).

50. 1950—Labour Law Journal p. 457 (Suti Mills Mazdoor Union and J.K. Cotton Spinning & Weaving Co. Union).

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